whereby said backup unit can be notified immediately when said first unit suffers a software fault.

22. (Original) The method recited in claim 21 wherein said exception handler activates said interface unit to send a control packet from said first unit to said backup unit.

23.) (Original) The method recited in claim 21 wherein said interface unit includes a DMA ring and said exception handler places control packet directly in said DMA ring for transmission to said backup unit.

24. (Previously Presented) A computer readable medium containing instructions which, when executed in a system, cause said system to perform the method recited in claim 21.

25. (Previously Presented) A computer readable medium containing instructions which, when executed in a system, cause said system to perform the method recited in claim 22.

REMARKS

Claims1-25 are pending in this application.

Claims 2, 3, 10, 11, 19, 20, and 23 were indicated as allowable.

It is noted that claims 2 and 3 are noted listed on the PTOL-326 form; however, the list of allowable claims appears on page 9 of the office action

Claims 1, 4-9, 12-18, 21, 22, 24 and 25 were rejected under 35 USC 102(e).

Calms 1, 12, and 21 have been amended to more clearly define the configuration of the control packet that is sent to the backup unit.

Allowable Subject Matter: Claims 2, 3, 10, 11, 19, 20, and 23 were indicated as allowable; however, they were objected to as being dependent upon a rejected base claim but would be allowable if rewritten. Applicant respectfully requests that this objection be held in abeyance until prosecution of the parent claims is completed.

Claim Rejections – 35 USC § 102(e): Claims 1, 4-9, 12-18, 21, 22, 24 and 25 were rejected under 35 USC 102(e) as being anticipated by U.S. Pat. No. 7,058,007 to Daruwalla et al (Daruwalla).

Applicant respectfully requests reconsideration and withdrawal of this rejected for the following reasons:

Claim 1 will be discussed in detail first and then the other rejected claims will be discussed:

Applicant's invention relates to one particular technique for detecting failure in a system and for activating a backup unit. As specified in claim 1, applicant's invention involves:

> sending "a control packet to the backup unit via said network interface unit without utilizing said operating system software, said control packet being configured to indicate that said operating system suffered a fault,".

The examiner states that:

> "Daruwalla teaches the cutover logic residing in hardware. ..... After cutover has occurred the protection CMTS taking over for the working CMTS, this is interpreted as the improvement which includes a notification program that operates when the exception handler is activated, said notification program being adapted to send a control packet to the backup unit via said network interface unit without utilizing said operating system software, whereby said backup unit can be notified immediately when said first unit suffers a software fault".

There is absolutely no teaching in the Daruwalla reference related to sending a control packet to the backup unit without utilizing the operating system software as required by the applicant's claim. That is, there is absolutely no teaching of the following which is specified in applicant's claim.

> sending "a control packet to the backup unit via said network interface unit without utilizing said operating system software, said control packet being configured to indicate that said operating system suffered a fault ".

The Daruwalla reference is primarily related to the concept of pre-registering a modem on a back-up the backup unit to speed up the cut over process. There is relatively little detail about how a fault is detected and the backup unit notified.

At column 10 lines 34 et seq. the Daruwalla reference states:

> "the protection CMTS may periodically issue station maintenance opportunities to the cable modem ..... The protection CMTS may also use a DOCSIS ping to determine whether the protection path works".

At column 13 lines 24 et seq. the Daruwalla reference states:

> "One event that must occur during the cutover is notification, via the appropriate routing protocol(s), that a new working CMTS (the protection CMTS) now provides access to the cable modems.....".

At column 14 lines 54 et seq. the Daruwalla reference states:

> "there should be continual 'chit chat' between the CMTS and its modems. .... These messages, which are sent at least about every 30 seconds, confirm that the upstream and downstream paths between cable modem and CMTS are operational".

At column 16 lines 65 et seq. the Daruwalla reference states:

> "the registration and cutover logic could reside in hardware, software, or some combination of the two".

Thus, Daruwalla points out that there are many possibilities for implementing a system that switches between a primary and a backup unit. The applicant's claims relate to one particular technique that is not taught by the prior are.

As recited in claim 1, applicant's system includes:

> "the improvement which includes
> a notification program that operates when the exception handler is activated,
>
> said notification program being adapted to send a control packet to the backup unit via said network interface unit without utilizing said operating system software, said control packet being configured to indicate that said operating system suffered a fault,
>
> whereby said backup unit can be notified immediately when said first unit suffers a software fault".

There is absolutely no teaching in the Daruwalla reference of:

> Sending "a control packet to the backup unit via said network interface unit without utilizing said operating system software, said control packet being configured to indicate that said operating system suffered a fault".

It is noted that this is a rejection under 35 USC 102. Hence, this is not a question of obviousness. A rejection under 35 USC 102 should be based upon what the reference shows. It is entirely improper for the examiner to "interpret" a reference as

showing something more than what is in fact shown in the reference as the examiner has done in this rejection.

For the above reasons, withdrawal of the rejection of Claim 1 under 35 USC 102 is respectfully requested.

The other rejected independent claims, that is, independent claims 12 and 21, contain language as that discussed above. These claims are allowable for the same reasons as discussed above relative to claims 1.

Thus, reconsideration and allowance of independent claims 12 and 21 is respectfully requested for the reasons explained above.

Rejected dependent claims 4-9 are dependent claim 1, either directly or through another claim. Dependent claims 4-9 distinguish from the reference for the same reasons as explained above relative to the parent claim 1. Reconsideration and withdrawal of the rejection of dependent claims 4-9 are therefore respectfully requested.

Rejected dependent claims 13-18 are dependent claim 12, either directly or through another claim. Dependent claims 13-18 distinguish from the reference for the same reasons as explained above relative to the parent claim 12. Reconsideration and withdrawal of the rejection of dependent claims 13-18 are therefore respectfully requested.

Rejected dependent claims 22, 24, and 25 are dependent claim 21, either directly or through another claim. Dependent claims 22, 24, and 25 distinguish from the reference for the same reasons as explained above relative to the parent claim 21. Reconsideration and withdrawal of the rejection of dependent claims 22, 24, and 25 are therefore respectfully requested.

CONCLUSION:

For the reasons give above, reconsideration and allowance of claims 1-25 as amended is requested. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,

Customer No. 20575

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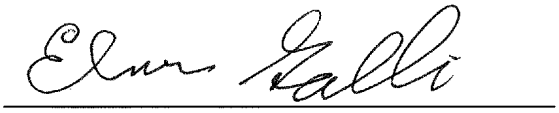

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